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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,434	04/19/2006	Siegfried F. Karg	CH920030009US1	9566
32074 7590 09/23/2010 INTERNATIONAL BUSINESS MACHINES CORPORATION DEPT. 18G BLDG. 321-482 2070 ROUTE 52 HOPEWELL JUNCTION, NY 12533				
EXAMINER HORNING, JOEL G				
ART UNIT 1712		PAPER NUMBER		
NOTIFICATION DATE 09/23/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

EFIPLAW@US.IBM.COM

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/595,434	Applicant(s) KARG ET AL.
Examiner JOEL G. HORNING	Art Unit 1712

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 10-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Michael Cleveland/
Supervisory Patent Examiner, Art Unit 1712

/JOEL G HORNING/
Examiner, Art Unit 1712

Continuation of 11. does NOT place the application in condition for allowance because: On page 4, applicant states that, during the interview, "if Applicants can show that the intensified electromagnetic near-field is NOT merely an intensified laser beam focused by the AFM probe tip in a way that is similar to a lens focusing a laser beam, then Applicants' above argument will be considered persuasive." The examiner regrets any confusion, but the office's position is not that the methods must work via the same mechanism to be obvious. The examiner directs applicants' attention to the current MPEP 2143(B,D,F) and MPEP 2144.07. The question of obviousness hinges on whether a practitioner would recognize them as being suitable substitutes for each other which would produce predictable results. For example, an incandescent bulb and a fluorescent tube operate through very different mechanisms, but they are considered similar and it is obvious to use them in place of each other because a practitioner recognizes that either one can predictably be used to provide light to see by. As a result, the current argument is not convincing. Applicants' then argue that Yau does not expressly teach that in some places the light intensity will not be sufficient to decompose the TMA vapor. However, applicants do not specify where the light intensity is not sufficient to decompose TMA. For this limitation to NOT be met would then require that everywhere (even outside the chamber or inside the TMA source itself) the light must be sufficient to decompose TMA. Since this is clearly not the case, the limitation is met. Furthermore, if we were to just discuss the volume inside the chamber, if the light is sufficient everywhere to decompose TMA, then there is no need for a lens to intensify the light around the source tip (making the feature of Yau useless), and also the patterning process would not work well because a film would be deposited everywhere. This argument is not convincing.

Continuation of 13. Other: The amendments to the claims only cancelled withdrawn claims, so all current claims are rejected for the same reasons they were previously.